



California Fair Political Practices Commission

October 27, 1988

Jack R. Witz
Director, Environmental Programs
ICF Technology Incorporated
10 Universal City Plaza, Suite 2400
Universal City, CA 91608-1097

Re: Your Request for Advice
Our File No. A-88-382

Dear Mr. Witz:

We have received your request for advice regarding your consulting assignment for Lockheed Aeronautical Systems Company and whether it presents a conflict-of-interest under the provisions of the Political Reform Act.^{1/}

QUESTION

Does your previous status as a Board member for the California Regional Water Quality Control Board, Region 4 (the "Board") disqualify you from consulting for Lockheed Aeronautical Systems Company ("Lockheed") on water quality protection?

CONCLUSION

You did not participate in the proceeding currently before the Board concerning Lockheed's clean up of contaminated drinking water. Therefore, you may consult for Lockheed on water quality protection.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

FACTS

You served as a board member for the California Regional Water Quality Control Board, Region 4 from November 1983 through October 1987. During this period, Lockheed Aeronautical Systems Company was conducting groundwater and surface investigations on its Burbank property. These investigations were being done in response to concerns of water surveyors and local governments over contamination of drinking water supplies. Board staff was involved in the planning and oversight of the investigation, but Board members were given only periodic status reports on the investigation. All reports provided to the Board in this regard were public information.

As far as you know and according to the minutes of the regular Board meetings, the Board itself took no formal action against Lockheed during your tenure as a Board member. You also did not, during your tenure, participate in formal or informal discussions with other Board members or staff regarding the investigation. Subsequent to your departure from the Board, the Executive Officer issued an order to Lockheed to clean up its contamination of drinking water supplies. Your letter does not indicate whether Lockheed contested the order in a subsequent administrative or legal proceeding and whether those proceedings have been concluded. However, we infer from your letter that Lockheed did not contest the order and does not intend to do so.

You are now an employee of ICF Technology Incorporated (ICF). ICF apparently has a contract with Lockheed by which ICF is to provide consulting services in the areas of general environmental regulatory affairs related to air permitting, water quality protection and hazardous waste management. You are among persons at ICF who are assigned to provide these services. Since Lockheed apparently continues to operate under the Executive Officer's order to clean up its contamination of drinking water supplies, we assume that your services would in some way assist Lockheed in its effort to comply with the order.

ANALYSIS

Government Code Section 87401 states:

No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

Government Code Section 87402 states:

No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

Your membership on the Board makes you a former state administrative official who is subject to the restrictions of Sections 87401 and 87402. (Section 87400(b).) Accordingly, you are prohibited from representing, aiding, advising, counseling, consulting, or assisting in representing any person,^{2/} for compensation in connection with any proceeding in which you participated as a member of the Board.

For purposes of Sections 87401 and 87402, you "participated" in a proceeding if you took part in the proceeding "personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information" as a member of the Board. (Section 87400(d).)

^{2/} "Person" is broadly defined under the Act to include any organization or group of persons acting in concert. (Section 82047.)

Section 87400(c) provides that a "proceeding" is "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency." The Board staff's investigation of Lockheed and the order by which Lockheed was required to clean up contaminated drinking water are "proceedings" within the meaning of section 87400(c). The issue, however, is whether the investigation and the clean up after issuance of the Executive Order are the same proceeding.

The Commission has interpreted the word "proceeding," in connection with Coastal Commission permit applications, to refer to a specific permit application, including all of the procedural stages involved in the application. A new permit application, even if it involves the same tract of land, or some of the same issues, as a previous application, ordinarily is considered a new proceeding. (See enclosed copies of the following advice letters: Berrigan, No. A-86-045 and Galanter, No. A-82-079.) Furthermore, in connection with another Regional Water Quality Control Board, the Commission has stated that a petition for reconsideration of an order prohibiting a particular method of water discharge is a proceeding that is separate from an application by the same company to discharge the same water by a different method. (See enclosed copy of Anderson Advice Letter, No. A-86-324.)

In this matter, the same company is involved in both the investigation and the clean up and the same issue of water contamination exists. However, the clean up proceedings present a set of circumstances that are entirely different from the investigative proceedings that took place before issuance of the Executive Order. In the investigative proceedings, the Board staff was no doubt attempting to resolve issues as to the extent of the water contamination and Lockheed's culpability therefor. On the other hand, once the Executive Order issued and Lockheed chose not to contest it,^{3/} these issues were conceded and the parties turned their attention to compliance with the order.

^{3/} As mentioned earlier in this letter, the Commission infers from the information provided that Lockheed did not contest the clean up order at the administrative or judicial level. This letter, therefore, does not address the question of whether you may consult for Lockheed if Lockheed is currently contesting or plans to contest the clean up order at the administrative or judicial level.

Jack R. Witz
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The investigation and the clean up were, therefore, not the same "proceeding" for purposes of Sections 87401 and 87402. Since you were not a member of the Board at the time the clean up order issued or thereafter, it cannot be said that you "participated" in the clean up proceeding. On this basis, you are not prohibited under the Political Reform Act from consulting for Lockheed on the issue of water quality protection.

If you have any questions or require further information, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

DMG:SH:ld

Enclosures

10 Universal City Plaza, Suite 2400
Universal City, California
91608-1097

818/509-7150



ICF TECHNOLOGY INCORPORATED

4 October 1988

Ms. Diane Griffiths
Legal Division
Fair Political Practices Commission
428 J. Street, #800
Sacramento, CA 95814

Dear Ms. Griffiths:

I am requesting an advice letter before accepting a consulting assignment as an employee of ICF Technology Incorporated for Lockheed Aeronautical Systems Company due to my prior service on the California Regional Water Quality Control Board, Region 4.

I served as a Regional Board member from November 1983 to October 1987. During this period Lockheed Aeronautical Systems Company was conducting groundwater and subsurface investigations on its Burbank property primarily in response to concerns of water purveyors and local governments in the area (i.e., Burbank, Los Angeles) over contamination of drinking water supplies. Regional Board staff were involved in planning and oversight of the work; however, the Board members were only given infrequent and periodic status reports on the investigation, mostly based on newspaper accounts of Lockheed's activities. All information provided to the Board members was public information.

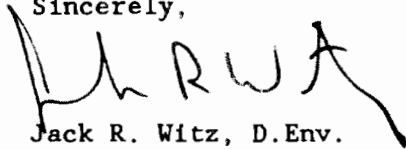
To the best of my knowledge, the Board never took any official action on Lockheed while I was a member. The record of minutes of regular Board meetings confirms this. Neither did I participate in formal discussions during noticed meetings or informal discussions with Board members or staff. Subsequent to my membership on the Board, the Executive Officer issued an Executive Order to Lockheed to begin clean-up--no Board action was taken.

Lockheed is requesting my consulting services in the area of general environmental regulatory affairs related to air permitting, water quality protection and hazardous waste management.

Ms. Diane Griffiths
4 October 1988
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If you have any questions or require further clarification of any statement made in this letter, please do not hesitate to call me at (818) 509-7150. Your prompt attention to this matter would be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "JRW", with a stylized flourish extending from the end.

Jack R. Witz, D.Env.
Director, Environmental Programs



California Fair Political Practices Commission

October 7, 1988

Jack R. Witz, D. Env.
Director, Environmental Programs
ICF Technology Incorporated
10 Universal City Plaza, Suite 2400
Universal City, CA 91608-1097

Re: 88-382

Dear Mr. Witz:

Your letter requesting advice under the Political Reform Act was received on October 5, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn Donovan
Acting General Counsel

KED:ld

10 Universal City Plaza, Suite 2400
Universal City, California
91608-1097

818/509-7150

88-382



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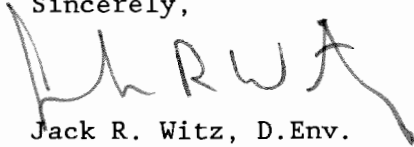
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Jack R. Witz, D.Env.
Director, Environmental Programs